

## **EXHIBIT 2**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FACEBOOK, INC. :  
Plaintiff, :  
:  
v. :  
:

POWER VENTURES, INC. d/b/a:  
POWER.COM, a California :  
corporation; POWER : Case No.  
VENTURES, INC. a Cayman : 5:08-CV-05780  
Island Corporation, STEVE : JW (HRL)  
VACHANI, an individual; :  
DOE 1, d/b/a POWER.COM, an:  
individual and/or business:  
entity of unknown nature; :  
DOES 2 through 25, :  
inclusive, individuals :  
and/or business entities :  
of unknown nature, :  
Defendants. :

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09:57 1 having worked as a product manager, but I could not  
09:57 2 code in any of this.

09:57 3 Q. And how about Perl?

09:57 4 A. I'm familiar -- familiar with it  
09:57 5 again, but no -- no programming experience.

09:57 6 Q. Are you familiar with the term  
09:57 7 "script" as it's used in computer programming?

09:57 8 A. Yes.

09:57 9 Q. All right. What would your  
09:57 10 understanding of a script be?

09:57 11 A. A script is a -- an auto -- it's  
09:58 12 something that you instruct a -- a computer to do  
09:58 13 something.

09:58 14 Q. Have you ever been involved in the  
09:58 15 development of any types of scripts?

09:58 16 A. Personally?

09:58 17 Q. Yes.

09:58 18 A. I mean, I've been involved as a  
09:58 19 product manager. Not as a programmer or coder.

09:58 20 Q. Okay. In the level --

09:58 21 A. Project manager -- as a CEO  
09:58 22 leading products.

09:58 23 Q. As a CEO or as a project manager --

09:58 24 A. Yes. That's correct.

09:58 25 Q. -- working with scripts, what

10:04 1 A. Legally, no. As I mentioned at  
10:04 2 the moment, any new activities that I'm pursuing,  
10:04 3 I'm pursuing under this entity, so I'm currently  
10:04 4 engaged in conversations with -- with people.

10:04 5 Q. And when did you join Power?

10:04 6 A. Power was founded in -- It was  
10:04 7 2006 is when our -- our primary activities started.  
10:04 8 We incorporated Power, I believe it was, if I'm not  
10:04 9 mistaken, late 2006 and -- but the activities  
10:05 10 started previously as a start-up, we started  
10:05 11 working on it.

10:05 12 Q. Were you one of the creators of  
10:05 13 Power?

10:05 14 A. I was the founder of the company.

10:05 15 Q. Now, when you say it was  
10:05 16 incorporated in 2006 but started before then, was  
10:05 17 it started under the Web site title www.power.com?

10:05 18 A. No. It was originally -- When we  
10:05 19 originally started it, there was no Web site. It  
10:05 20 was a -- Like many startups we were -- we were  
10:05 21 working on a core, you know, product idea, and  
10:05 22 later the name power.com came about in 2007. I  
10:05 23 believe we acquired the domain in 2007.

10:05 24 Q. Who helped -- Besides yourself,  
10:05 25 who helped create Power.com. You used the --

02:33 1 Q. Do you know if there were  
02:33 2 documents reflecting Power's ideas being bantered  
02:33 3 about describing how they could get new members?

02:33 4 A. Yes. I believe we provided those  
02:33 5 to you.

02:33 6 Q. Do you know -- How many documents  
02:33 7 do you believe you provided to Facebook  
02:34 8 approximately?

02:34 9 A. I think it was -- not -- less -- I  
02:34 10 don't know. It was less than ten, I believe.

02:34 11 Q. The -- And how often were  
02:34 12 marketing schemes discussed internally at Power, if  
02:34 13 you know?

02:34 14 A. How often? They would be in  
02:34 15 conversations, like, we'd have -- we -- meetings.  
02:34 16 There would be conversations if anything became  
02:34 17 relevant or useful. There would be -- Most of them  
02:34 18 were e-mail discussions, so e-mail discussions  
02:34 19 would be where most of conversations took place,  
02:34 20 but obviously they were also verbal conversations.

02:34 21 Q. Do you know if any particular  
02:34 22 discussions ever occurred relating to soliciting  
02:34 23 members from Facebook?

02:34 24 A. Soliciting members from Facebook?  
02:34 25 What do you mean?

02:34 1 Q. To join -- To join Power.

02:34 2 A. We didn't have access to -- The  
02:35 3 users could invite their friends. So that was a  
02:35 4 feature that -- One of our promotions in our  
02:35 5 features was that you could invite your friends to  
02:35 6 join, invite your friends on Facebook to join, and  
02:35 7 so people could -- they could make promotions so  
02:35 8 they could create events around -- around a power  
02:35 9 creativity around Power. So we gave our user -- We  
02:35 10 encourage our users, in fact, to bring their  
02:35 11 friends in the same way that Facebook encourages  
02:35 12 its users to bring their friends from other sites.  
02:35 13 But we employed same tactics that are used by --  
02:35 14 similar tactics where you invite your friends, so  
02:35 15 we did use invite friends features and promotions.

02:35 16 Q. If you go back to Exhibit 103, you  
02:35 17 see various -- "Displayed a Launch Promotion" in  
02:35 18 the upper left-hand corner?

02:35 19 A. Yup.

02:35 20 Q. It says, "First 100 people who  
02:35 21 bring 100 new friends to power.com earn \$100?"

02:36 22 A. Yes.

02:36 23 Q. Is that an example of a pop-up  
02:36 24 that was made available on the site that was  
02:36 25 designed to encourage new users to the site?

02:36 1 A. I don't know if this was a pop-up.  
02:36 2 You can see it was prominently displayed on the  
02:36 3 front page. That's not more than that, it's not a  
02:36 4 pop-up. I think the terminology is not pop-up it's  
02:36 5 an ad -- In fact, it's a prime-placed ad on the  
02:36 6 home page.

02:36 7 Q. Do you know whose idea it was for  
02:36 8 this particular promotion?

02:36 9 A. That was mine.

02:36 10 Q. Do you know when you came up with  
02:36 11 it?

02:36 12 A. While I was sleeping. I just  
02:36 13 thought a hundred, hundred, hundred was a good  
02:36 14 idea.

02:36 15 Q. All right. And when you clicked  
02:36 16 on the Number 100, what would happen?

02:36 17 A. It gave you a chance to -- to  
02:36 18 select which friends you wanted to -- to, I guess,  
02:36 19 invite to -- to join -- to join Power.

02:36 20 Q. All right. And was that -- Would  
02:36 21 you agree that, as reflected on Exhibit 103, that  
02:37 22 particular promotion was made available at the time  
02:37 23 that you were connected to Facebook?

02:37 24 A. Yes. It was.

02:37 25 Q. And if you clicked on 100 people,

02:37 1 you would be invited to ask your friends to join  
02:37 2 power.com?

02:37 3 A. No. You would have the option to  
02:37 4 invite your friends to join just like you have the  
02:37 5 option on Facebook to invite your friends to join  
02:37 6 Facebook and every other site on the Internet, and  
02:37 7 if they did, if they reach a hundred friends that  
02:37 8 joined, they would earn \$100.

02:37 9 Q. And if you accepted the feature  
02:37 10 that came up saying would you -- it said something  
02:37 11 like, "Would you like to invite your friends to  
02:37 12 Power"?

02:37 13 A. Yes.

02:37 14 Q. If you hit "yes" or "I agree" --

02:37 15 A. Yes.

02:37 16 Q. -- how -- what -- what  
02:37 17 automation would occur at that point?

02:37 18 A. So first of all, you have to  
02:38 19 remember that 99 percent of our users were not --  
02:38 20 were not using -- were not using Facebook. They  
02:38 21 were users on other sites, so we actually -- I  
02:38 22 guess you could say we were actually a big source  
02:38 23 of providing users to Facebook in Brazil. In fact,  
02:38 24 as -- I guess you could say it was a gift, but we  
02:38 25 -- we brought a large amount of Orkut users to



02:38 1 Facebook, so that's where a lot of our promotions  
02:38 2 were -- Because our users already, as you know,  
02:38 3 have -- Prior to having Facebook, we had millions  
02:38 4 of users who have hundreds of friends already in  
02:38 5 the system, and that represented 99 percent of our  
02:38 6 contacts in our system. Facebook was a very small  
02:38 7 part of this world. At that time, obviously it's a  
02:38 8 much larger site today but in our world, in our  
02:38 9 growth it was -- it was introduced later. So we  
02:38 10 were encouraging our friends -- our users to go and  
02:38 11 register at Facebook and become Facebook users.  
02:38 12 Because in our -- in our view, the more social  
02:39 13 networks that users were using, the more value it  
02:39 14 would be to, you know, to aggregate different  
02:39 15 sites. So we encouraged users to sign up for  
02:39 16 Facebook. In fact, we're giving free marketing to  
02:39 17 Facebook. So to answer your question, a lot of  
02:39 18 these users -- You could see all your friends from  
02:39 19 all your sites and say, "Hey. Join Facebook when  
02:39 20 you're at Facebook." That was a big part of our  
02:39 21 promotions. That was the largest part of our  
02:39 22 promotions. And then, of course, if they have  
02:39 23 friends that are already using Facebook -- Facebook  
02:39 24 and they wanted to invite their friends to come use  
02:39 25 Power, that's the smaller part. But the biggest

02:39 1 one were obviously the friends that the user had  
02:39 2 already put in the system.

02:39 3 Q. The promotion itself had to have  
02:39 4 an attribute created for it in the MSQl database.  
02:39 5 Correct?

02:39 6 A. Yes. That's correct.

02:39 7 Q. And that attribute would then be  
02:40 8 assigned to anybody who clicked on the promotion.  
02:40 9 Correct?

02:40 10 A. What do you mean "the attribute"?

02:40 11 Q. Well, if someone clicked on the  
02:40 12 promotion, their user name would then be assigned  
02:40 13 to the attribute associated with the promotion.  
02:40 14 Correct?

02:40 15 A. If they selected to invite a  
02:40 16 friend, they could send an invitation to that  
02:40 17 friend.

02:40 18 Q. That's not what I'm talking about.  
02:40 19 The minute that -- Let's say I'm Ms. Almeirda who's  
02:40 20 being shown on the screen shot.

21 A. Okay.

02:40 22 Q. If Ms. Almeirda clicks on the  
02:40 23 launch promotion --

02:40 24 A. Yes.

02:40 25 Q. -- she would have received a --

02:42 1 technically it was -- it was much easier just to  
02:42 2 manually look and I believe -- We can see how many  
02:42 3 friends people invited so -- and then we just  
02:42 4 manually took those people out. I think they were  
02:42 5 -- When we provided it, I think there might have  
02:42 6 been 30 or 40 people that achieved it, so it was  
02:42 7 literally just looked on the list of people who  
02:42 8 invited friends to Power who had more than a  
02:43 9 hundred.

02:43 10 Q. All right. But when say, "looked  
02:43 11 on the list" you were looking in a database table.  
02:43 12 Correct?

02:43 13 A. Yeah. We went to our database.  
02:43 14 Importing friends is a -- is a feature. It's a --  
02:43 15 It's a -- As I mentioned many times, it's one of  
02:43 16 our features on our site.

02:43 17 Q. And in order to see how the  
02:43 18 promotion was set up in terms of identification of  
02:43 19 those who were participating in it, I'd need to see  
02:43 20 the database. Correct?

02:43 21 A. To see the -- Every single user on  
02:43 22 our site has the option to invite friends. Who  
02:43 23 achieved a hundred, I can tell you. I don't know  
02:43 24 the number but it was 30 something people that  
02:43 25 received -- that reached a hundred friends, so I

02:44 1 looked in the database. Correct?

02:44 2 A. We looked in our database,  
02:44 3 correct. And we provided the numbers, I believe,  
02:44 4 on that promotion to you guys.

02:45 5 Q. When somebody clicked on the  
02:45 6 launch promotion and they were given, like you to  
02:45 7 invite your friend" --

02:45 8 A. That's correct.

02:45 9 Q. -- and they hit yes, at that  
02:45 10 point the importer, as we've been calling it, would  
02:45 11 automatically contact all friends on Facebook to  
02:45 12 invite them to --

02:45 13 A. Let's be clear. We don't have  
02:45 14 access to any friends' e-mail addresses, so there  
02:45 15 was not a single E mail sent by Face -- by Power  
02:45 16 for -- We have e-mail addresses for friends on  
02:45 17 other sites, but on -- so we -- If they wanted to  
02:45 18 invite, as I said 99 -- well over 90 percent of our  
02:45 19 users were Orkut users and Orkut friends and had  
02:45 20 friends from other sites where they -- on sites  
02:45 21 that allowed their E mails, but Facebook didn't --  
02:45 22 didn't allow E mails, otherwise, we would have been  
02:45 23 happy to send an invitation to those friends to  
02:45 24 invite them; so that was not available for us for  
02:46 25 Facebook.

02:46 1 Q. At this point, I haven't even  
02:46 2 talked about E mail. All I meant is at the point  
02:46 3 at which someone said yes they'd like to invite  
02:46 4 their friends, the database would then recognize,  
02:46 5 using its importer function and the idea of the  
02:46 6 registered user Power, who the friends were.  
02:46 7 Correct?

02:46 8 A. It would show you a list of all  
02:46 9 your friends, yes, from your friends list.

02:46 10 Q. And the invitation to join was  
02:46 11 then automatically forwarded to those friends  
02:46 12 whether through E mail if you're on Orkut or some  
02:46 13 other way on Facebook. Correct?

02:46 14 A. A user had to say, "I want to  
02:46 15 invite this friend," so it's -- An authorized user  
02:46 16 said, "Yes, these are my friends, and these are the  
02:46 17 friends I want to invite to this site." That is  
02:46 18 correct.

02:46 19 Q. All right. And at that point, an  
02:46 20 automated script would contact whatever friends  
02:46 21 were identified. Correct?

02:46 22 A. Depends on -- So if the friend was  
02:46 23 a non-- Facebook did not provide E mails. If the  
02:47 24 friend was, like, on another site and they had the  
02:47 25 E mail, they could -- they could send on E mail

02:51 1 copy their friends and say, "Sign up with this  
02:51 2 link." They were unlimited ways that people can  
02:51 3 communicate with their friends.

02:51 4 Q. All right. But the link was  
02:51 5 provided in the communication by Power. Correct?

02:51 6 A. The link was given -- Power  
02:51 7 provided a link to our users to encourage them to  
02:51 8 invite their friends.

02:51 9 Q. And did Power also prepare the  
02:51 10 script that was included with that invitation?

02:51 11 A. I think, yeah, we provided them --  
02:51 12 we provided them a script, yeah. As every single  
02:51 13 -- As Facebook does and everybody else does.

02:51 14 Q. Now, in the case of Facebook, you  
02:51 15 say that Facebook didn't permit you to contact  
02:51 16 through E mails?

02:51 17 A. What do you mean "Facebook doesn't  
02:51 18 permit"? Facebook did -- It has nothing to do with  
02:51 19 permitting it. We wanted -- If we wanted to -- We  
02:51 20 just didn't have access to the E mails because  
02:52 21 Facebook -- If we wanted to, we could have -- We  
02:52 22 didn't get to that, but we would be happy to build  
02:52 23 a feature that imported your E mail contacts, but  
02:52 24 we didn't -- we didn't do that. We never got to  
02:52 25 that point.

02:53 1 that you could determine how many Facebook  
02:53 2 registered users were contacted as part of this  
02:53 3 promotion?

02:53 4 A. Facebook registered users?  
02:53 5 Meaning if they were contacted -- In what manner?  
02:53 6 If they happened -- If they were contacted at Orkut  
02:53 7 and they happened to have an account on Facebook  
02:53 8 but were not contacted through -- through the help  
02:53 9 of Facebook?

02:53 10 Q. No. I'm talking about were there  
02:53 11 individuals at Facebook contacted on the Facebook  
02:53 12 -- through the Facebook system --

02:53 13 A. Yes.

02:53 14 Q. -- as a result of this promotion?

02:53 15 A. Yes. Of course.

02:53 16 Q. Is there a way to determine how  
02:53 17 many were contacted?

02:54 18 A. Well, we could do -- If you take a  
02:54 19 few minutes, we can probably figure out -- It's  
02:54 20 obviously very small, but -- Because the Facebook  
02:54 21 users were so small, but let's think about -- So  
02:54 22 people created events on Facebook, so promoting it,  
02:54 23 because our users were -- You know, some of them  
02:54 24 created events saying, "Come on Facebook," about  
02:54 25 come and joining, they created messages. They

02:57 1 at that time, but I know it's usually standard, you  
02:58 2 know, more common to have a default to invite all  
02:58 3 your friends. I think Facebook does that, in fact.

02:58 4 Q. Setting aside what the default  
02:58 5 was, as part of the invitation, would list the  
02:58 6 friends that could be contacted?

02:58 7 A. That's correct.

02:58 8 Q. And that would list the friends  
02:58 9 who were available as friends on Facebook.  
02:58 10 Correct?

02:58 11 A. I believe so, yes.

02:58 12 Q. And for the friends who were  
02:58 13 contacted on Facebook, an invitation to join Power  
02:58 14 would then be set if the person had that person  
02:58 15 selected as, "Yes. I would like them to be  
02:58 16 invited"?

02:58 17 A. Yeah. If they could communicate  
02:58 18 to invite them, they would be invited.

02:58 19 Q. And earlier you said that however  
02:58 20 the mechanism was, whether it was events or E mails  
02:58 21 for other Web sites or whatever -- setting aside  
02:58 22 the telephone call, if it was in a text-based  
02:58 23 communication --

02:58 24 A. Yes.

02:58 25 Q. -- Power would provide the text



02:58 1 and the URL link to Power as part of that  
02:58 2 communication so --

02:58 3 A. Yes.

02:59 4 Q. -- so the friends would know  
02:59 5 where to go to be invited. Correct?

02:59 6 A. We would provide them text that  
02:59 7 they could use. Correct. Of course.

02:59 8 Q. And the list of friends was  
02:59 9 recovered from the database and the variables that  
02:59 10 were associated with friends with that user ID?

02:59 11 A. Every -- I think -- Every user --  
02:59 12 One of our core features is you can access all your  
02:59 13 friends and create a friends list. So, yes, I  
02:59 14 mean, you have a friends list and you can select  
02:59 15 from your aggregated friends list who you want to  
02:59 16 invite.

02:59 17 Q. Now, earlier you said while most  
02:59 18 people contacted their Web site dynamically inside  
02:59 19 the browser, the functionality existed to have the  
02:59 20 automation available on through the PowerScript  
02:59 21 also contact the Web sites. Correct?

02:59 22 A. What do you mean?

02:59 23 Q. In other words, you -- In order to  
02:59 24 obtain -- user content, for instance, from Web  
02:59 25 sites, you could use the automated script available

02:59 1 through PowerScript to download --

02:59 2 A. That's what any importer does.  
03:00 3 When you use an importer, you're -- you're  
03:00 4 basically authorizing a script to go to another  
03:00 5 site and access certain data. So, like, when  
03:00 6 Facebook -- as your Facebook import you authorize a  
03:00 7 script written by Facebook to go to another site,  
03:00 8 take that data, bring it back, and then Facebook  
03:00 9 sends an invitation on behalf of the user. That's  
03:00 10 the same process that we go through. That is  
03:00 11 correct.

03:00 12 Q. And in the invitation that was  
03:00 13 then sent as part of the launch promotion to a  
03:00 14 Facebook user, how would the Power site know what  
03:00 15 function or what feature on Facebook to populate  
03:00 16 the invitation to? In other words, how would it  
03:00 17 know to send it to an event or say an instant  
03:00 18 message or whatever medium of communication?

03:00 19 A. Well, Facebook doesn't have  
03:00 20 instant message. You know, a user can go and -- If  
03:00 21 a user wanted to manually click on a friend and  
03:01 22 say, "Hey," I don't believe even they had Facebook  
03:01 23 chat at that time, so there wasn't even -- I don't  
03:01 24 think it was a feature, so we didn't even interact  
03:01 25 with that. They could write a message to their

03:01 1 friend. They could create an event or they could  
03:01 2 go and, I guess, take that link up and paste it and  
03:01 3 write an E mail to their friend.

03:01 4 Q. Was one of the ways that Power was  
03:01 5 able to make the invitation available to Facebook  
03:01 6 users is that the PowerScript would set up an event  
03:01 7 on Facebook on behalf of the user who had clicked  
03:01 8 on --

03:01 9 A. If the user authorized for the  
03:01 10 creation of the event, yes.

03:01 11 Q. And if the -- How did the -- How  
03:01 12 did Power know it was to set up an event as opposed  
03:01 13 to any other way of communicating --

03:01 14 A. Because the user said, "Create an  
03:01 15 event for me," so user authorized the creation of  
03:01 16 an event.

03:01 17 Q. Was that made available on the  
03:01 18 promotion -- on the pop-up that made -- would come  
03:02 19 up --

03:02 20 A. That was -- As I said, if you  
03:02 21 clicked that, that was one of the options that the  
03:02 22 user had an option to create an event.

03:02 23 Q. What other options did the user  
03:02 24 have? We can take a break here.

03:02 25 THE VIDEOGRAPHER: It's 3:01. Off

03:02 1 the record, Tape 4.

03:02 2 (Whereupon, a recess is taken.)

03:14 3 THE VIDEOGRAPHER: 3:13, on the  
03:14 4 record. Beginning of Tape 5.

03:14 5 Q. Mr. Vachani, just before the break  
03:14 6 you indicated that in the instance of Facebook  
03:14 7 being contacted by Power --

03:14 8 MR. COOPER: Strike that.

03:14 9 Q. That in the instance in which a  
03:14 10 friend of somebody who had indicated their interest  
03:14 11 in participating in the launch promotion, the  
03:14 12 friend was on Facebook, that one option that was  
03:14 13 available to contact that friend was events. Do  
03:14 14 you recall that before the break saying?

03:15 15 A. I believe creating a event.

03:15 16 Q. Do you recall what the other  
03:15 17 options were?

03:15 18 A. I don't offhand, but I think they  
03:15 19 provided a link where they could -- So everyone was  
03:15 20 given a unique link so they could go do whatever  
03:15 21 they want with that link, write E mails to friends,  
03:15 22 call on the phone, whatever so that was -- When  
03:15 23 they clicked, they were made available a link, and  
03:15 24 I think that maybe send in a message so Facebook --  
03:15 25 While they can't send an E mail, they can send a

03:15 1 message to friends on Facebook, so they could  
03:15 2 message their friend. So if the user said, "I want  
03:15 3 to send a message, private message," they could  
03:15 4 send a private message to their friend, if I'm not  
03:15 5 mistaken.

03:15 6 Q. Let me -- Any other options?

03:15 7 A. I don't remember offhand, but  
03:15 8 those are the -- I think the primary ones, but  
03:15 9 obviously they had -- they had a link that they  
03:15 10 could use whatever way they wanted to. They could  
03:15 11 create an event -- create an event, send a message.  
03:16 12 Those are the ones I could think of off hand, but I  
03:16 13 believe whatever details on this were also provided  
03:16 14 in the past in the previous declarations.

03:16 15 Q. In the case of providing a link,  
03:16 16 in what way was the link displayed on Facebook?

03:16 17 A. When the user is provided a link  
03:16 18 on Power, and they can copy and paste and do  
03:16 19 whatever they want to -- to go promote that link.

03:16 20 Q. I see.

03:16 21 A. So just as any invitation process  
03:16 22 on sites. You give a unique link which has your  
03:17 23 unique identifier in it, so if someone signs up  
03:17 24 from that link you -- you get credit for it.

03:17 25 Q. And that link would be the URL to

03:20 1 that was sent to Facebook --

03:20 2 A. Usually --

03:20 3 MR. BURSOR: Objection. Vague and  
03:20 4 ambiguous.

03:20 5 Q. Do you know who created the text  
03:20 6 that was prepared through the automated script that  
03:20 7 was sent by Power to Facebook users?

03:20 8 MR. BURSOR: Objection. Vague and  
03:20 9 ambiguous. Assumes facts not in evidence. Lacks  
03:20 10 foundation. You can answer.

03:20 11 A. I'm repeating what he said.  
03:20 12 Objecting. It's vague and ambiguous.

03:21 13 MR. BURSOR: I objected. If you  
03:21 14 can understand it, you can answer it.

03:21 15 Q. Mr. Vachani, as I said at the  
03:21 16 beginning, your attorney has the right to interject  
03:21 17 actions unless he instructs you not to answer --

03:21 18 A. Okay.

03:21 19 Q. Let me -- One of the ways that you  
03:21 20 said that Facebook users would be contacted for  
03:21 21 this promotion was the Power user could say they  
03:21 22 wanted to participate and contact friends to create  
03:21 23 an event?

03:21 24 A. Correct.

03:21 25 Q. And you said the automatic script

03:21 1 -- the automated script created by Power would, in  
03:21 2 fact, create an event on Facebook?

03:21 3 A. If the user authorized it and  
03:21 4 indicated they wanted to do that. That's correct.

03:21 5 Q. As part of the creation of that  
03:21 6 event, was text included as part of event set up --

03:21 7 A. They were shown texts just like  
03:21 8 standard practice. They were shown it and  
03:21 9 authorized it.

03:21 10 Q. And that text included the same  
03:22 11 link to the URL to Power?

03:22 12 A. I would assume it has the link in  
03:22 13 it, yes.

03:22 14 Q. The E mails that you said were  
03:22 15 sent to users of, like, Orkut that had e-mail  
03:22 16 addresses available on your site --

03:22 17 A. Correct.

03:22 18 Q. To the best of your knowledge --  
03:22 19 And you said the link itself was one way that you  
03:22 20 would be allowed to contact users. Correct?

03:22 21 A. Well, you could take the link and  
03:22 22 pass the link. It's -- You provide them a unique  
03:22 23 link and they can go to messenger and copy that  
03:22 24 link and say, "Hey, go sign up for -- for Power."

03:22 25 Q. Do you know if that URL had an ID

04:14 1 create an event as part of \$100 promotion use the  
04:14 2 language, "Bring 100 friends and 100 bucks"?

04:14 3 MR. BURSOR: Hold on a second.  
04:14 4 Objection. Vague, ambiguous. Assumes facts not in  
04:14 5 evidence. Lacks foundation. If you could clarify  
04:14 6 whether you're referring to PowerScript or Facebook  
04:14 7 script, that might help clear up some of the --

04:14 8 MR. COOPER: I asked specific -- I  
04:14 9 will say it again. Was the language, "Bring 100  
04:14 10 friends and win 100 bucks," language that was used  
04:14 11 in the Power automated script when it set up the  
04:14 12 event on Facebook?

04:14 13 MR. BURSOR: Objection. Vague,  
04:14 14 ambiguous. Assumes facts not in evidence. Lacks  
04:15 15 foundation. Listen to the question carefully, and  
04:15 16 if you can understand it, you can answer it.

04:15 17 A. Bring 100 friends and 100 bucks  
04:15 18 was our -- our tag line, so -- but I don't --  
04:15 19 whether the user entered that in on their own or  
04:15 20 whether they -- they put this. I cannot say from  
04:15 21 this -- from looking at this, but that was the  
04:15 22 language that we suggested to users to use. But  
04:15 23 many users changed the language, too, and put other  
04:15 24 language in those events, so I can't -- This is one  
04:15 25 example of a user creating an event. I cannot say



04:15 1 what -- you know, how this was specifically created  
04:15 2 because they -- they had -- they could have created  
04:15 3 this event and the language was -- That was the tag  
04:15 4 line we were promoting, but I do not know if this  
04:15 5 was specifically -- this specific E mail or if they  
04:16 6 copied and pasted it if they did whatever. But  
04:16 7 what I do know is, this was an event where the user  
04:16 8 specifically authorized us and said -- either  
04:16 9 created this event manual or specifically  
04:16 10 authorized us to create this event.

04:16 11 MR. COOPER: We've got to go off  
04:16 12 the record.

04:16 13 THE VIDEOGRAPHER: It's 4:15. Off  
04:16 14 the record. End of Tape 5.

04:16 15 (Whereupon, a recess is taken.)

04:23 16 THE VIDEOGRAPHER: 4:22, on the  
04:23 17 record. Beginning of Tape 6.

04:23 18 Q. Before the break you indicated  
04:23 19 that, "Bring 100 friends and win 100 bucks" was the  
04:23 20 tag line but you couldn't say for sure how the --

04:23 21 MR. COOPER: Strike that.

04:23 22 Q. Before the break, you indicated  
04:23 23 that "Bring 100 friends and win 100 bucks" was the  
04:23 24 tag line employed by Power. Correct?

04:23 25 A. That was the tag line of the

04:23 1 campaign and the suggested text and promotion that  
04:23 2 we encourage our users to promote in any kind of  
04:23 3 promotion they made in the acquisition of and  
04:23 4 invitation of friends.

04:23 5 Q. Where would I find documentation  
04:23 6 reflecting precisely what language was suggested  
04:23 7 that users use with Facebook events?

04:23 8 A. That would have been on the -- the  
04:23 9 power -- on this page. On the page after they  
04:24 10 clicked on this promotion, so it came up with a  
04:24 11 page --

04:24 12 Q. Talking about Exhibit 103?

04:24 13 A. I don't know if that page -- Does  
14 it exist?

04:24 15 Q. I'm asking if you're talking about  
16 Exhibit 103.

04:24 17 A. I'm talking about this page. I  
04:24 18 don't know if there's an exhibit.

04:24 19 Q. You're pointing to Exhibit 103?

04:24 20 A. Exhibit 103, I'm sorry. So if  
04:24 21 they clicked on that, there was a page that they  
04:24 22 went to.

04:24 23 Q. And --

04:24 24 A. Gave them those options.

04:24 25 Q. Where, if at all, does that

[illegible]

[illegible]

The image is entirely black and contains no visible content.

04:28 1 application PowerScript application?

04:28 2 A. The actual language?

04:28 3 Q. Yes.

04:28 4 A. Was -- That was -- That phrase  
04:28 5 "Bring 100 friends, 100 bucks" was created by me.

04:28 6 Q. Do you know if the remainder of  
04:28 7 any text that was employed in suggested text in  
04:28 8 private messages that were used on Facebook as a  
04:29 9 result of automated script were prepared by you?

04:29 10 MR. BURSOR: Could you read that  
04:29 11 back, please?

04:29 12 (Whereupon, the last question is  
04:29 13 read back by the reporter.)

04:29 14 MR. BURSOR: Objection. Vague,  
04:29 15 ambiguous. Assumes facts not in evidence. Lacks  
04:29 16 foundation. You can answer.

04:29 17 A. Repeat the question one more time.

04:29 18 Q. You earlier indicated private  
04:29 19 messages were one of the ways that the automated  
04:29 20 script would permit somebody using this campaign to  
04:29 21 contact friends on Facebook.

04:29 22 A. Okay. So to be clear --

04:29 23 Q. Yes or no.

04:29 24 A. I want to clarify. Earlier I said  
04:29 25 that could be one of the ways that someone could

04:29 1 send it. I honestly don't know if we actually ever  
04:29 2 used private messages. It was a long time ago. To  
04:29 3 my recollection, I don't -- I don't remember us  
04:29 4 sending private messages, but it was definitely  
04:30 5 something we -- we discussed, but I don't know if  
04:30 6 we actually ever got to employing that method.  
04:30 7 It's been a long time since that happened. It's  
04:30 8 possible that users took suggested text and wrote  
04:30 9 messages to friends and if -- I don't remember if  
04:30 10 we actually employed that technique, but it's  
04:30 11 something we obviously would have been happy to do  
04:30 12 because if the user authorized us to do it, I just  
04:30 13 don't remember if we actually did it.

04:30 14 Q. Looking at Exhibit 103, the launch  
04:30 15 promotion --

04:30 16 A. Yup.

04:30 17 Q. -- who prepared the PowerScript  
04:30 18 that is reflected in that launch promotion?

04:30 19 A. It could have been Carlos or  
04:30 20 Danilo.

04:30 21 Q. What documentation shows how that  
04:30 22 launch promotion was implemented on power.com?

04:30 23 A. It was either -- It was either a  
04:30 24 verbal, "Hey, use this text," in a meeting, said,  
04:31 25 "Hey, this is the text you should use," and they

04:31 1 took it or there was an E mail. I don't know.

04:31 2 Q. But you see the box, "Launch  
04:31 3 Promotion." Correct?

04:31 4 A. Yes.

04:31 5 Q. That is a feature that is made  
04:31 6 available to the power.com user through the  
04:31 7 power.com Web site. Right?

04:31 8 A. Yes.

04:31 9 Q. None of the aggregated social  
04:31 10 networks prepared the contents shown in that  
04:31 11 promotional box. Correct?

04:31 12 A. Right.

04:31 13 Q. Where would I find documentation  
04:31 14 showing me how that launch promotion was  
04:31 15 implemented on power.com?

04:31 16 A. So it either was in a meeting that  
04:31 17 we had where I said, "Hey, this is the text you  
04:31 18 want to use for this promotion," and they would  
04:31 19 have noted it down, or it would have been an E mail  
04:31 20 that was sent saying, "Use this text." One of  
04:31 21 those two. I don't know which one it was because  
04:31 22 we had weekly meetings where we discussed ideas and  
04:31 23 this was -- this was an idea that I had come up  
04:32 24 with. So many times I would share my idea. I  
04:32 25 would say, "Eric, use this text. This is a





04:41 1 Q. And it was sued, in part, because  
04:41 2 of Facebook's allegations relating to how this  
04:41 3 launch promotion was employed. Correct?

04:41 4 A. I don't know what Facebook made  
04:41 5 allegations to is right there.

04:41 6 Q. Earlier you said that Facebook is  
04:41 7 responsible for sending the E mail notification  
04:41 8 about the invite.

04:41 9 A. Yeah. That was sent by Facebook  
04:42 10 servers.

04:42 11 Q. But Facebook's E mail servers  
04:42 12 would not send the invite, but for the initiation  
04:42 13 of the event. Correct?

04:42 14 A. A user has to authorize -- A user  
04:42 15 has to create an event for Facebook to do that and  
04:42 16 a user has to log in with their user name and  
04:42 17 password and do this, so Facebook authorizes its  
04:42 18 users to create events as part of their -- That's  
04:42 19 the relationship Facebook has with its users.

04:42 20 Q. You indicated some of the events  
04:42 21 are set up through the automated scripted?

04:42 22 A. No. What I indicated is that  
04:42 23 users -- users created these events. Whether the  
04:42 24 user authorized -- whether they authorized an agent  
04:42 25 to go do it for them or they did it, it's the same

04:42 1 thing. It's initiated by the user, that's what we  
04:42 2 know.

04:42 3 Q. The automated script, though, is  
04:42 4 operated by power.com?

04:42 5 A. It's a -- An automated script for  
04:42 6 PowerScript, are initiated by users and executed by  
04:42 7 power.com in the same way that an exporter is  
04:43 8 initiated by user and managed by the site that's  
04:43 9 doing it on behalf of the user. Did you get that?  
04:43 10 Yes.

04:43 11 (Whereupon, Exhibit 107 is marked  
04:43 12 for identification by the reporter.)

04:43 13 Q. Mr. Vachani, Exhibit 107 is  
04:43 14 Exhibit A to the first amended complaint that was  
04:43 15 106. Have you seen this document before today?

04:43 16 A. What is this document I'm looking  
04:43 17 at?

04:43 18 Q. Exhibit A to the first amended  
04:43 19 complaint.

04:43 20 A. Is this the Facebook Terms and  
04:43 21 Conditions?

04:43 22 Q. Yes.

04:44 23 A. I have -- Vaguely -- I've seen  
04:44 24 this before, yes. I don't know if I've seen this  
04:44 25 specific version. I've read the Facebook Terms and

04:45 1 says Page 415?

04:45 2 A. Yes.

04:45 3 Q. Can you read the first bullet  
04:45 4 point to yourself and tell me when you've finished?

04:45 5 A. The first bullet point? Yes.

04:45 6 Okay.

04:45 7 Q. As of December 1st, 2008, do you  
04:45 8 know one way or another whether anybody at Power  
04:45 9 had read that particular provision in the Facebook  
04:45 10 Terms of Service?

04:45 11 A. Yes.

04:45 12 Q. Had you read it?

04:45 13 A. Yes.

04:45 14 Q. All right. Did you have an  
04:46 15 understanding whether power.com enabled users to  
04:46 16 registered users to violate the Terms of Service?

04:46 17 A. I don't understand how a message  
04:46 18 that a user wants to send to another friend --  
04:46 19 First of all, it's an unsolicited message; and  
04:46 20 second, I don't understand what this Terms and  
04:46 21 Conditions has anything to do with -- with -- I  
04:46 22 don't understand how the relevance to the  
04:46 23 questions.

04:46 24 Q. Did you have an understanding  
04:46 25 whether or not power.com to enabled its registered

04:47 1 and not only Facebook but the entire Internet, that  
04:47 2 what we were doing definitely has a pretty strong  
04:48 3 grounds to be value. Obviously, there's no legal  
04:48 4 precedent whatsoever anywhere that exists relating  
04:48 5 to this issue, so that's why I don't understand  
04:48 6 what this discussion is about.

04:48 7 Q. Mr. Vachani, whether you  
04:48 8 understand what it's about, my question is simply  
04:48 9 did Power have an understanding whether it was  
04:48 10 enabling registered users of Power to violate the  
04:48 11 Terms of Service of Facebook?

04:48 12 A. Let me be clear. You specifically  
04:48 13 asked about unsolicited communications and we did  
04:48 14 not send any unsolicited E mails or communications.  
04:48 15 Neither did our users. If our users wanted to send  
04:48 16 a message to their friend, they have the right to  
04:48 17 send a message or authorize the sending of a  
04:48 18 message. This is a -- This is something that it's  
04:48 19 commonplace and used by every site including  
04:48 20 Facebook as a core part of their business. That's  
04:48 21 why I don't understand why we're talking about  
04:48 22 unsolicited communications.

04:48 23 Q. Mr. Vachani, again, I asked simply  
04:49 24 -- you don't need to even look at the any of the  
04:49 25 bullet points. Did power.com, as of December 1st,

04:50 1 the question read back and then just answer the  
04:50 2 question.

04:50 3 A. So what's the question?

04:50 4 (Whereupon, the last question is  
04:50 5 read back by the reporter.)

04:50 6 MR. BURSOR: Is the question:  
04:50 7 Does he see that in the agreement?

8 MR. COOPER: Yeah, that's all I  
9 asked.

10 MR. BURSOR: Yeah, so do you see  
04:50 11 that -- do you see that --

04:50 12 A. I see that in the agreement.

04:50 13 MR. BURSOR: Yeah, so then you've  
04:50 14 answered the question.

15 A. Okay. Yeah, I see that in your  
04:50 16 agreement.

04:50 17 Q. Have you read that language as of  
04:50 18 December 1st, 2008?

04:50 19 A. Yes. I had read it many times.

04:50 20 Q. Had anybody else at power.com read  
04:50 21 that language as of December 1st, 2008?

04:50 22 A. I don't know if they read it. It  
04:51 23 was my job to read it and I think Filipe probably  
04:51 24 read it. Those are the two people that I know.

04:51 25 Q. As of December 1st, 2008, had you

04:56 1 I think she was one of the lawyers, but I could --  
04:56 2 Yeah.

04:56 3 Q. All right. All I'm just asking if  
04:56 4 you can recall the name of lawyers who handle --  
04:56 5 I'm not even asking any specific legal matter --

04:56 6 A. We did have counsel in the United  
04:56 7 States, and at a later point Wilson Sonsini was our  
04:56 8 lawyer after we moved from Skadden to Wilson  
04:56 9 Sonsini.

04:56 10 Q. Who at Wilson Sonsini?

04:56 11 A. I apologize. It was -- The  
04:56 12 interactions were not extensive with those  
04:56 13 companies.

04:56 14 Q. Besides Mr. Herrera, did you ever  
04:57 15 have any discussions with anybody at Power about  
04:57 16 Facebook's Terms of Service?

04:57 17 A. It would be with Eric.

04:57 18 Q. Eric Santos?

04:57 19 A. Eric and Filipe were the two  
20 primary people that I would consult on these  
21 issues.

22 Q. Okay. So Filipe --

04:57 23 A. Not on -- Primarily Filipe.

04:57 24 Q. Mr. Herrera, my understanding --  
04:57 25 Was he listed as general counsel by Power?

05:00 1 A. No. From Facebook. I received an  
05:01 2 E mail from Mr. Cutler.

05:01 3 Q. Did you receive the E mail or the  
05:01 4 letter from Facebook first?

05:01 5 A. The E mail.

05:01 6 Q. Did the E mail include this  
05:01 7 letter?

05:01 8 A. Yes. This was sent on December  
05:01 9 1st, if I remember correctly.

05:01 10 Q. All right. Going back to Exhibit  
05:01 11 107, could you turn to Page 9 of 107. Do you see  
05:01 12 the bottom of Page 9 there's a discussion of  
05:01 13 Facebook Connect?

05:01 14 A. Yes.

05:01 15 Q. As of December 1st, 2008, had  
05:01 16 Power ever evaluated whether they could use  
05:01 17 Facebook Connect to connect the Power site or  
05:01 18 integrate the Power site with Facebook?

05:02 19 A. Extensively.

05:02 20 Q. All right. And do you recall how  
05:02 21 long that evaluation lasted?

05:02 22 A. I don't remember, but we  
05:02 23 definitely talked about it, looked at it, and I  
05:02 24 made a conclusion that it did not in any way. It  
05:02 25 would not in any way enable the functionality that



05:02 1 our users were expecting from us.

05:02 2 Q. When did these -- How were these  
05:02 3 -- First of all, who were you referring to that we  
05:02 4 discussed this when you --

05:02 5 A. Typically, it would be in a weekly  
05:02 6 meeting. It would probably come up on the agenda,  
05:02 7 Facebook Connect, and Eric would usually lead this.  
05:02 8 He probably would have looked at -- with his team  
05:02 9 he would have evaluated and played with Facebook  
05:02 10 Connect to see what they could do and what its  
05:02 11 capable in evaluating stuff and would have reported  
05:02 12 on this at a meeting, at a weekly meeting.

05:02 13 Q. Who participated in these weekly  
05:02 14 meetings?

05:02 15 A. It would be members of program --  
05:02 16 members of the -- Typically, it would be management  
05:03 17 but if there was a specific person other than  
05:03 18 management that was necessary such as a member of  
05:03 19 the team, we would -- they would come in and  
05:03 20 consult on an issue.

05:03 21 Q. Let me be clear. Did you  
05:03 22 participate in these weekly meetings?

05:03 23 A. In many of them. Not all of them.

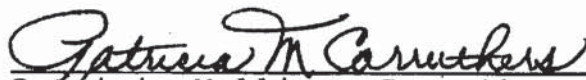
05:03 24 Q. Who do you recall besides yourself  
05:03 25 and Mr. Santos?

C E R T I F I C A T I O N

I, PATRICIA MULLIGAN CARRUTHERS, a  
Certified Shorthand Reporter and Notary Public of  
the State of New Jersey and a Notary Public of the  
State of New York, do hereby certify that prior to  
the commencement of the examination the witness was  
sworn by me to testify as to the truth, the whole  
truth, and nothing but the truth.

I do further certify that the foregoing is  
a true and accurate transcript of the testimony as  
taken stenographically by and before me at the  
time, place, and on the date hereinbefore set  
forth.

I do further certify that I am neither of  
counsel nor attorney for any party in this action  
and that I am not interested in the event nor  
outcome of this litigation.



Patricia Mulligan Carruthers, CSR  
Certificate No. XI00780  
Notary Public of the State of New York  
Notary Public of the State of New Jersey

Dated: JULY 27, 2011

My commission expires October 28, 2015 (N.J.)  
My commission expires December 21, 2013 (N.Y.)